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Abdul Majid bin Yusoff v Mirzan bin Mahathir

B HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24NCVC-395–03 OF 2017
FAIZAH JAMALUDIN JC
13 SEPTEMBER 2017

C *Civil Procedure — Transfer of proceedings — District court to High Court — Applicant applied for transfer of his counterclaim action from sessions court to High Court on basis that subject matter exceeded sessions court jurisdiction — Whether sessions court had jurisdiction to hear counterclaim — Whether sessions court had jurisdiction to grant relief above sum of RM1m — Whether*
D *counterclaim could not be transferred since sessions court granted summary judgment in favour of respondent — Whether application to transfer should be filed before summary judgment entered against applicant — Rules of Court 2012 O 57 — Subordinate Courts Act 1948 s 66*

E The respondent had filed an action at the sessions court against the applicant for the amount of RM400,000 being a friendly loan advanced by the respondent to the applicant. The applicant in response filed a counterclaim amounting to RM3.6m based on milestone agreement entered between the
F parties. The sessions court judge ('the SCJ') granted summary judgment in favour of the respondent but the learned SCJ did not make any order in relation to the applicant's counterclaim. The present action was filed by the applicant for an order to transfer the applicant's action for counterclaim to the High Court pursuant to O 57 r 1(2) of the Rules of Court 2012 ('the ROC') on
G the basis that the value of the subject-matter of his counterclaim against the respondent exceeded the sessions court's jurisdiction ('the applicant's application'). In defence, the respondent submitted that the counterclaim could not be transferred to the High Court because summary judgment had been granted for the respondent's claim against the applicant. The respondent
H further submitted that the applicant should have filed his application to transfer the proceedings of his counterclaim to the High Court before the summary judgment was entered against the applicant in the sessions court.

I **Held**, allowing the applicant's application:

(1) The value of the subject-matter of the applicant's counterclaim in the sessions court was RM3.6m. Although by virtue of s 66(1) of the Subordinate Courts Act 1948, the sessions court had the jurisdiction to

hear the counterclaim, it did not have the jurisdiction to grant any relief above the sum of RM1m in the event that it found for the applicant in its counterclaim (see para 17).

(2) The court disagreed with the respondent's argument that the counterclaim could not be transferred to the High Court because summary judgment had been granted for the respondent's claim against the applicant. It is trite law that a claim and counterclaim must to be treated as independent actions. Accordingly, the respondent's claim and the applicant's counterclaim in the sessions court were separate and independent claims (see para 17).

(3) The court disagreed with the respondent's submission that the applicant should have filed his application to transfer the proceedings of his counterclaim to the High Court before the summary judgment was entered against the applicant in the sessions court. Order 57 of the ROC did not stipulate any timeline within which a party must apply for the transfer of proceedings from one court to another (see para 18).

[Bahasa Malaysia summary

Responden telah memfailkan tindakan di mahkamah sesyen terhadap pemohon bagi wang sejumlah RM400,000 sebagai pinjaman persahabatan yang diberikan oleh responden kepada pemohon. Pemohon dalam menjawab memfailkan tuntutan balas berjumlah RM3.6 juta berdasarkan perjanjian pengurusan projek yang dimasuki di antara pihak-pihak. Hakim mahkamah sesyen ('HMS') membenarkan penghakiman ringkas memihak responden tetapi HMS yang bijaksana tidak membuat apa-apa perintah berkaitan tuntutan balas pemohon. Tindakan ini difailkan oleh pemohon untuk perintah memindahkan tindakan pemohon bagi tuntutan balas ke Mahkamah Tinggi berikutan A 57 k 1(2) Kaedah-Kaedah Mahkamah 2012 ('KKM') atas dasar bahawa nilai perkara tuntutan balasnya terhadap responden melebihi bidang kuasa mahkamah sesyen ('permohonan pemohon'). Dalam menjawab, responden berhujah bahawa tuntutan balas tidak boleh dipindahkan ke Mahkamah Tinggi kerana penghakiman ringkas telah dibenarkan untuk tuntutan responden terhadap pemohon. Responden selanjutnya berhujah bahawa pemohon sepatutnya memfailkan permohonannya untuk memindahkan prosiding tuntutan balasnya ke Mahkamah Tinggi sebelum penghakiman ringkas dimasukkan terhadap pemohon di mahkamah sesyen.

Diputuskan, membenarkan permohonan pemohon:

(1) Nilai perkara tuntutan balas pemohon di mahkamah sesyen adalah RM3.6 juta. Walaupun mengikut s 66(1) Akta Mahkamah Rendah 1948, mahkamah sesyen mempunyai bidang kuasa untuk mendengar tuntutan balas, ia tidak mempunyai bidang kuasa untuk membenarkan apa-apa relif melebihi jumlah RM1 juta jika ia memihak kepada

pemohon di dalam tuntutan balasnya (lihat perenggan 17).

(2) Mahkamah tidak bersetuju degan hujahan responden bahawa tuntutan balas tidak boleh dipindahkan ke Mahkamah Tinggi kerana penghakiman ringkas telah dibenarkan untuk tuntutan responden terhadap pemohon. Ia adalah undang-undang nyata bahawa tuntutan dan tuntutan balas mesti dianggap sebagai tindakan bebas. Oleh itu, tuntutan responden dan tuntutan balas pemohon di mahkamah sesyen adalah tuntutan-tuntutan berasingan dan bebas (lihat perenggan 17).

(3) Mahkamah tidak bersetuju dengan hujahan responden bahawa pemohon sepatutnya memfailkan permohonannya untuk memindahkan prosiding tuntutan balasnya ke Mahkamah Tinggi sebelum penghakiman ringkas dimasukkan terhadap pemohon di mahkamah sesyen. Aturan 57 KKM tidak menyatakan apa-apa had masa yang mana pihak mesti pohon untuk memindahkan prosiding daripada satu mahkamah ke mahkamah lain (lihat perenggan 18).]

Notes

For a case on district court to High Court, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) para 10876.

Cases referred to

Amon v Bobbett (1889) 22 QBD 543, CA (refd)
United Trade Arena (M) Sdn Bhd & Ors v Bank Pertanian Malaysia Bhd [2016] 2 MLJ 65; [2016] 1 CLJ 979, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 12
Rules of the High Court 2012 O 14, O 57, O 57 r 1, 1(2)
Subordinate Courts Act 1948 ss 65, 65(1), 66, 66(1)

Abu Daud Abd Rahim (Mohammad Zuraidi with him) (Azmi & Assoc) for the plaintiff.
Ooi Chih-Jen (Chih-Jen & Assoc) for the defendant.

Faizah Jamaludin JC:

[1] This is the applicant's application (encl 1) by way of an originating summons under O 57 r 1(2) of the Rules of the High Court 2012 ('the ROC'):

(i) to transfer the proceedings of the defendant's counterclaim in Civil Suit No WA-B52NCVC-672–08 of 2016 from the sessions court to the High Court;

(ii) the title Civil Suit No WA-B52NCVC-672 be amended in accordance with the directions of the High Court Kuala Lumpur;

(iii) directions be given regarding the filing or title in the High Court Kuala Lumpur;

(iv) after the order to transfer the proceedings to the High Court is granted, to stay all proceedings in relation to Civil Suit No WA-B52NCVC-672 in the session's court until the fulfilment of all the necessary procedures under O 57 r 1(2) of the ROC; and

(v) cost of the application to cost in the cause.

[2] The applicant's application is on the basis that the value of the subject-matter of his counterclaim against the respondent exceeds the sessions court's jurisdiction.

[3] This court granted order in terms of prayers (i), (ii), (iv) and (v) of encl 1. For prayer (iii), I directed that upon the transfer of the matter to the High Court, the plaintiff and the defendant in the High Court shall remain the same as in the sessions court, namely Mirzan bin Mahathir as plaintiff and Abdul Majid bin Yusoff as defendant.

[4] The grounds of my judgment are as set out herein. The parties are referred to in this grounds of judgment as they are referred to in the sessions court.

FACTS

[5] The plaintiff had filed an action against the defendant for the payment of a personal advance and/or friendly loan for the sum of RM400,000 advanced/loaned by the plaintiff to the defendant.

[6] In his defence and counterclaim, the defendant counterclaimed from the plaintiff, among others, pursuant to a milestone agreement between them, the following:

(a) the plaintiff sells and transfers 1,400 units of shares in Solid Maple Sdn Bhd to the defendant at the price of RM1 per unit; and

(b) the plaintiff returns the shareholding in Solid Maple Sdn Bhd valued at RM3.6m from Maple Icon Sdn Bhd to Solid Maple Sdn Bhd.

[7] On 15 December 2016, the learned sessions court judge granted an order for summary judgment against the defendant under O 14 of the ROC. The learned judge didn't make any order in relation to the defendant's counterclaim.

THE DEFENDANT'S CASE

[8] The defendant's case is that the session's court does not have the jurisdiction to try the defendant's counterclaim which is for the amount of RM3.6m since it exceeds the session's court jurisdictional threshold of RM1m set out in s 65(1) of the Subordinate Courts Act 1948 ('the SCA'). And pursuant to s 66 of the SCA, the sessions court cannot award any relief of more than RM1m in respect of the defendant's counterclaim.

THE PLAINTIFF'S CASE

[9] The plaintiff's opposes the defendant's application for the transfer on the grounds that:

(a) the defendant has not shown how O 57 of the ROC has been satisfied;

(b) the Kuala Lumpur Sessions Court has jurisdiction to hear the defendant's counterclaim;

(c) as summary judgment has been entered in favour of the plaintiff, the proceedings in relation to the defendant's counterclaim cannot be transferred to the High Court; and

(d) there is delay in the defendant's application: the transfer should have been done prior to the granting of the summary judgment.

LAW

[10] Section 65 of the SCA sets out the civil jurisdiction of the sessions court, which is as below:

> 65(1) Subject to the limitations contained in this Act, a Sessions Court shall have —
>
> (a) unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress;
>
> (b) jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed one million ringgit; and
>
> (c) without prejudice to the generality of para (b), jurisdiction to try all actions and suits of a civil nature for the specific performance or rescission of contracts or for cancellation or rectification of instruments, within the jurisdiction of the sessions court.

[11] In relation to counterclaims in the sessions court and transfers therefrom, s 66 of the SCA provides as follows:

> 66(1) Where in any action or suit of a civil nature before a Sessions Court any defence or counterclaim of the defendant involves matters beyond the jurisdiction

of the Court, the defence or matter shall not affect the competence or the duty of the Sessions Court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and any defence thereto, *but no relief exceeding that which the Court has jurisdiction to award shall be given to the defendant upon the counterclaim.*

(2) In any such case the High Court may, if it thinks fit, on the application of any party, order that the action or suit be transferred to the High Court, and the action or suit shall then be entered in the cause book or register of civil suits of the High Court, and proceeded with as if the action or suit had been originally instituted therein. (Emphasis added.)

[12] The High Court is empowered by the Courts of Judicature Act 1964 ('the CJA') with the jurisdiction to order the transfer of proceedings to and from the subordinate courts:

12 Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:

Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

[13] Order 57 r 1 of the ROC provides that:

1 Transfer of proceedings to another Court (O 57, r 1)

(1) Where the Judge of the High Court or a Judge of the sessions court or a magistrate is satisfied that any proceedings in that court can *be more conveniently or fairly tried* in some other court of co-ordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other court.

(2) A transfer of any proceedings from —

(a) a Subordinate Court to the High Court; or

(b) the High Court to a Subordinate Court,

shall only be made by an order of that High Court Judge on application by any party by originating summons or notice of application, whichever is appropriate. (Emphasis added)

ANALYSIS

[14] Pursuant to s 65 of the SCA, the sessions court does not have the jurisdiction to try all actions and suits of a civil nature where the amount in dispute or the value of the subject-matter exceeds RM1m.

[15] Section 66 of the SCA provides that where the defence or counterclaim of the defendant involves matters beyond the jurisdiction of the sessions court,

the sessions court can dispose of the whole matter in controversy. However, s 66 expressly states that the sessions court cannot grant any relief to the defendant for his counterclaim which exceeds the sessions court jurisdiction. Therefore, if the sessions court finds for the defendant in relation to his counterclaim, the court cannot grant the defendant relief for the sum of more than RM1m.

[16] Pursuant to s 12 of the CJA and O 57of the ROC, on the application of a party by way of originating summons or notice of application, this court is empowered to transfer any proceedings from the sessions court to this court, if this court is satisfied that the matter can be 'more conveniently or fairly tried' in this court.

[17] The value of the subject-matter of the defendant's counterclaim in the sessions court is RM3.6m. Although by virtue of s 66(1) of the SCA, the sessions court has the jurisdiction to hear the counterclaim, it does not have the jurisdiction to grant any relief above the sum of RM1m in the event that it finds for the defendant in its counterclaim. I disagree with the plaintiff's argument that the counterclaim cannot be transferred to the High Court because summary judgment has been granted for the plaintiff's claim against the defendant. It is trite law that a claim and counterclaim must to be treated as independent actions: see *Amon v Bobbett* (1889) 22 QBD 543. Accordingly, the plaintiff's claim and the defendant's counterclaim in the sessions court are separate and independent claims. The Court of Appeal in *United Trade Arena (M) Sdn Bhd & Ors v Bank Pertanian Malaysia Bhd* [2016] 2 MLJ 65; [2016] 1 CLJ 979 held that notwithstanding the filing of a counterclaim, summary judgment may still be given against the defendant. Ahmadi Asnawi JCA in delivering the judgment of the Court of Appeal said:

> We agreed with the learned judge as it has been decided by a string of case laws that, notwithstanding the filing of a counterclaim, summary judgment may still be given (see *Perwira Habib Bank Malaysia Bhd v Samuel Pakianathan Jabamanickam* [1993] 2 MLJ 423; [1993] 3 CLJ 349 SC).

[18] I also disagree with the plaintiff counsel's submission that the defendant should have filed his application to transfer the proceedings of his counterclaim to the High Court before the summary judgment was entered against the defendant in the sessions court. Order 57 of the ROC does not stipulate any timeline within which a party must apply for the transfer of proceedings from one court to another.

CONCLUSION

[19] For the above reasons, I am satisfied that the counterclaim will be more fairly tried in this court. Accordingly, this court allows the defendant's application to transfer his counterclaim from Civil Suit

No WA-B52NCVC-672–08 of 2016 from the sessions court to the High Court and grants the prayers in encl 1 as detailed in para (3) above.

ORDER

[20] So ordered accordingly.

Applicant's application allowed.

Reported by Dzulqarnain Ab Fatar